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REDWOOD CREDIT UNION

FILED

AUG 25 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

Exhibit

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

REDWOOD CREDIT UNION,

Plaintiff,

v.

The Vessel NAUTI 'N NICE, its engines, boilers,
tackle, furniture, licenses, masts, bowsprit, boat,
anchors, cables, chains, rigging, tackle, apparel,
furniture, and all other appurtenances, etc., in rem,
and JOSEPH M. PEULEN, an Individual, in
personam,

Defendants.

Civil Case No.:

C08-04059

MEJ

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR ISSUANCE OF WARRANT FOR
ARREST OF VESSEL AND
APPURTENANCES**

Plaintiff REDWOOD CREDIT UNION (the "Credit Union") respectfully submits the following Memorandum of Points and Authorities in support of its Request for Review in accordance with Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims, Federal Rules of Civil Procedure (hereinafter, "FRCivP Supp C").

I. Introduction

This is an admiralty and maritime claim arising from a promissory note secured by a Preferred Mortgage on Vessel documented through the U.S. Coast Guard. On or about January 8, 2004, Defendant Joseph M. Peulen (hereinafter "Defendant Peulen") entered into a written Loan Agreement and Security Agreement (the "Agreement") with the Credit Union. The Agreement was secured by Defendant Nauti

1 'N Nice, Official Number 671702 (hereinafter the "Defendant Vessel"), in the form of a Preferred
 2 Mortgage of Vessel (the "Mortgage") on or about January 8, 2004. The Mortgage provides that if
 3 Defendant Peulen fails to make the payments due under the Agreement, the Credit Union may take
 4 possession of and foreclose and sell the Defendant Vessel pursuant to the terms of the Agreement, the
 5 Mortgage, and the requirements of 46 U.S.C. Chapter 313. Defendant Peulen defaulted under the terms
 6 of the Agreement and the Mortgage and the Credit Union filed its verified complaint *in rem* to foreclose
 7 and sell the Defendant Vessel and *in personam* against Defendant Peulen on the Promissory Note.

9 Pursuant to FRCivP Supp C., judicial review of the plaintiff's verified complaint and supporting
 10 papers to determine that the conditions for an *in rem* action appear to exist is required prior to the Court
 11 instructing the Clerk to issue a Warrant for Arrest of Vessel.

12 II. Judicial Review Required

13 Pursuant to FRCivP Supp C, judicial review of the verified complaint and supporting papers, and a
 14 finding that the conditions for an action *in rem* appear to exist, is required before the Clerk may issue the
 15 Warrant for Arrest of Vessel.

16 Rule C (3) in pertinent part reads:

17 **Rule C. Actions in Rem: Special Provisions**

18 (3) Judicial Authorization and Process.

19 (a) Arrest Warrant.

20 (i) The court must review the complaint and any supporting papers. If the
 21 conditions for an *in rem* action appear to exist, the court must issue an order
 22 directing the clerk to issue a warrant for the arrest of the vessel or other property
 23 that is the subject of the action.

24 The verified complaint and supporting papers filed in this action are available for the Court's
 25 review and upon review the Court should find that the conditions for an action *in rem* appear to exist.

26 III. Action Properly In Rem

27 The conditions for an *in rem* action exist pursuant to the verified complaint and supporting
 28

documents on file herein, because the present action is a suit in Admiralty under the provisions of 46 U.S.C. 31325 for foreclosure of a First Preferred Mortgage on a Vessel and is an action properly *in rem* under the provisions of 46 U.S.C. 31325, which reads in pertinent part as follows:

Sec. 31325. Preferred mortgage liens and enforcement

(a) A preferred mortgage is a lien on the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by the vessel.

(b) On default of any term of the preferred mortgage, the mortgagee may -

(1) enforce the preferred mortgage lien in a civil action in rem for a documented vessel, a vessel to be documented under chapter 121 of this title, a vessel titled in a State, or a foreign vessel.

Pursuant to the verified complaint and supporting documents filed in this action, Defendant Peulen defaulted on one or more terms of the preferred mortgage. Therefore, plaintiff may enforce its preferred mortgage lien in a civil action *in rem* for the Defendant Vessel, a documented vessel.

IV. Conclusion

As stated above, Defendant Peulen entered into a Loan Agreement with the Credit Union that was secured by a First Preferred Mortgage on the Defendant Vessel. Defendant Peulen is in default under the agreement but has refused to pay despite demand. The Credit Union, therefore, filed its verified complaint *in rem* to foreclose and sell the Defendant Vessel and *in personam* against Defendant Peulen on the Promissory Note. For the foregoing reasons, the Credit Union respectfully requests that the Court order the Clerk to issue a Warrant for Arrest of Vessel.

Dated: August 20, 2008

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By: 

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